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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 230.

ANTONIO ORTEGA, PLAINTIFF IN ERROR,

vs.

ANGELA LARA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

FILED APRIL 18, 1905.

(19,713.)

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1 In the District Court of the United States for Porto Rico.

At a stated term of the district court of the United States of America, within and for the district of Porto Rico, begun and held at the court rooms of said court in the city of San Juan, in said district, on the second Monday in October, being the eleventh day of that month, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty-ninth.

Present: The Honorable Chas. F. McKenna, judge.

On January 6, 1905, among the proceedings had was the rendition of a judgment in the following cause, to-wit:

ANGELA LARA
vs.
ANTONIO ORTEGA.

Breach of Promise of Marriage. Damages, $10,000.00.

Be it remembered that heretofore, to wit, on the fourteenth day of October, came the plaintiff by her attorney and filed in the clerk's office of this court a complaint in the above-entitled cause, which said complaint is as follows; to wit:

Complaint.

In the District Court of the United States for Porto Rico.

ANGELA LARA
vs.
ANTONIO ORTEGA.

Complaint.

Now comes Angela Lara, complainant above-named, by her attorney, T. D. Mott, Jr., and complains of Antonio Ortega, defendant, and for cause of complaint alleges.

I.

That the plaintiff and the defendant are subjects of the King of Spain and residents of Porto Rico.

That heretofore, to wit, on or about the first day of June, A. D. 1900, in consideration that the plaintiff, being then sole and unmarried, at the request of the said defendant, had then promised the said defendant to marry him, the said defendant, on request, the defendant promised to marry the plaintiff within a reasonable time.

II.

That the plaintiff, confiding in said promise, has always since remained and continued, and still is, sole and unmarried, and has been for and during the time aforesaid, and up to the time of the said defendant's marriage to another, as is hereinafter stated, ready and willing to marry the defendant.

III.

That the defendant afterwards, to wit, in the year 1904, married a certain other person, to wit, —— ——, contrary to his said promise to the plaintiff and to her, the plaintiff's damage in the sum of ten thousand ($10,000) dollars.

Wherefore, plaintiff demands judgment against the defendant in the sum of ten thousand dollars, and for costs of suit.

T. D. MOTT, JR.,
Attorney for Plaintiff.

That thereafter, to wit, on the twenty-third day of November, 1904, came the defendant by his attorney and filed in the clerk's office of this court a demurrer to the above complaint, which said demurrer is as follows, to wit:

3 In the District Court of the United States for Porto Rico.

ANGELA LARA
vs.
ANTONIO ORTEGA.

Breach of Promise, $10,000.00.

Demurrer to the Complaint.

The defendant, Antonio Ortega, comes by his attorney, Ramon Falcon, and demurs to the complaint herein filed by the plaintiff, and for causes of demurrer says:

First.

That the said complaint does not state a cause of action against this defendant within the jurisdiction of this court.

Second.

Because said complaint does not set forth facts sufficient to constitute a cause of action under the laws of Porto Rico.

Wherefore, this defendant demurs and prays judgment of this honorable court on each of the grounds of demurrer herein taken.

RAMON FALCON,
Attorney for Defendant.

Service of a copy of the foregoing demurrer this 25th day of November, 1904, is hereby acknowledged.

T. D. MOTT, Jr.,
Attorney for Plaintiff.

And thereafter, to wit, on December 12, 1904, an entry was made upon the records of said court, which is as follows, to wit:

No. 281.

ANGELA LARA
vs.
ANTONIO ORTEGA.

4 The court hears the argument on the demurrer to the complaint herein, W. H. Hawkins appearing for the defendant, and T. D. Mott, Jr., for the plaintiff, and overrules the same, and upon request of the defendant, he is given three days within which to answer.

Answer.

Filed December 13, 1904.

In the District Court of the United States for Porto Rico.

ANGELA LARA, Plaintiff,
vs.
ANTONIO ORTEGA, Defendant.

Answer.

The defendant answers the complaint:

I. That he never promised to marry the plaintiff.

II. That at the time mentioned as the time of the said supposed promise, and for some time thereafter, this defendant paid attentions to the plaintiff and was accustomed to visit her and her family, and at such times the plaintiff falsely, and with intent to induce the defendant to marry the palintiff, represented to the defendant that her father and mother were legally married at the time of her birth, and that she, the said plaintiff, was the legitimate child of such marriage; but the defendant alleges that her father and mother were not at that time legally and duly married, and that she was born illegitimate, and upon being informed thereof the defendant ceased his attentions to the plaintiff and refused to marry her.

III. That the plaintiff further falsely and with intent to induce the defendant to marry the plaintiff, stated her age to be five
5 years younger than that of the defendant, but the defendant alleges that her age is the same as that of the defendant more

or less by a few months only, and upon being informed thereof the defendant ceased his attentions to the plaintiff and refused to marry her.

Wherefore, the defendant demands judgment and the costs of this action.

WM. H. HAWKINS,
Attorney for Defendant.

And thereafter, to wit, on January 4, 1905, an entry was made upon the records of said court, which is as follows, to wit:

No. 281.

ANGELA LARA
vs.
ANTONIO ORTEGA.

This cause coming on regularly for trial, both sides answer ready. Whereupon comes the jury, duly impaneled and sworn, to try the issues joined, composed of the following named persons, to wit: H. W. Dooley, J. A. Wilson, F. Lecer, Jr., Nicholas Peacock, Alejandro Diaz, Enrique Pina, J. M. Torres, E. P. Kammerer, Z. Val Spinoza, Donal MacKenzie, L. H. Vendig, Carl E. Swigget, who hear all the evidence in behalf of the plaintiff.

And thereafter, to wit, on January 5, 1905, an entry was made upon the records of said court, which is as follows, to wit:

No. 281.

ANGELA LARA
vs.
ANTONIO ORTEGA.

Resumed. The jury hears the conclusion of the testimony in the case, whereupon the defendant moves for a non-suit, which motion is heard and overruled, to which the defendant excepts.

6 Thereupon plaintiff moves for peremptory instructions to the jury for a verdict in her favor, and said motion being considered is sustained. Whereupon the jury hears the argument of counsel, the charge of the court upon the question of the amount of damages they should find, retires, and thereafter returns into court with the following verdict, to wit:

"We, the jury, assess the damages in favor of the plaintiff in the sum of $5,000 (five thousand) dollars.

E. P. KAMMERER, *Foreman.*

January fifth, 1905."

And thereafter, to wit, on January 6, 1905, a judgment was entered on the records of said court, which is as follows, to wit:

In the District Court of the United States for Porto Rico, January 6, 1905.

ANGELA LARA, Plaintiff,
vs.
ANTONIO ORTEGA, Defendant.

This action came on regularly for trial. The said parties appeared by their attorneys, T. D. Mott, Jr., Esq., counsel for plaintiff, and Frank Antonsanti, Esq., for defendant. A jury of twelve persons was regularly impaneled and sworn to try said action. Witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the court, the jury retired to consider of their verdict, and subsequently returned into court, with the verdict signed by the foreman, and, being called, answered to their names, and say:

7 "We, the jury, assess the damages in favor of the plaintiff in the sum of $5,000 (five thousand dollars).

E. P. KAMMERER, *Foreman.*"

January fifth, 1905.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged and decreed, that said plaintiff may have and recover from said defendant the sum of five thousand dollars ($5,000.00), with interest thereon at six per cent. (6%) per annum from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action, to be taxed by the clerk.

CHAS. F. McKENNA, *Judge.*

Motion in Arrest of Judgment.

Filed January 16, 1905.

In the United States District Court for Porto Rico.

No. 281.

ANGELA LARA
vs.
ANTONIO ORTEGA.

Now comes the defendant herein by his attorneys, Frank Antonsanti and Pettingill & Leake, and moves the court in arrest of judgment upon the verdict rendered by the jury herein on the 6th day of January, 1905, for the following reasons, to wit:

First. Because, upon the allegations of plaintiff's complaint, the plaintiff and defendant both being alleged to be aliens and subjects of the same monarch, to wit, the King of Spain, this court neither had nor has any jurisdiction to entertain or adjudicate any controversy between them.

Second. Because a verdict in favor of the plaintiff was not
8 warranted by the allegations of her complaint under the laws of Porto Rico governing the cause of action alleged, which is Section 44 of the Civil Code of Porto Rico, enacted and in force at the time said promise of marriage is alleged to have been made by the defendant to the plaintiff by virtue of an Act of the Congress of the United States, approved April 12, A. D. 1900, and entitled "An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes."

Third. Because the complaint in said cause is insufficient to base a judgment in favor of plaintiff upon, under the laws enacted by the Congress of the United States for the government of Porto Rico, and in force at the time said contract is alleged to have been made by defendant, which said laws govern the rights of the parties herein.

FRANK ANTONSANTI,
PETTINGILL & LEAKE,
Attorneys for Defendant.

Motion of Defendant for Judgment Non Obstante Veredicto.

Filed January 16, 1905.

In the United States District Court for Porto Rico.

No. 281.

ANGELA LARA
vs.
ANTONIO ORTEGA.

Now comes the defendant herein, by his attorneys, Frank Antonsanti and Pettingill & Leake, and moves the court for the entry of a *judgment non obstante veredicto* in his favor, for the following reasons, to wit:

Because, under the law of Porto Rico governing the cause of action alleged, which is Section 44 of the Civil Code of Porto Rico, enacted and in force at the time said cause of action is alleged to have arisen by virtue of an Act of the Congress of the United
9 States, approved April 12, A. D. 1900, entitled "An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," the complaint filed by the plaintiff herein does not set forth facts sufficient to constitute a cause of action against the defendant.

Wherefore, the judgment of the court should be that the plaintiff take nothing by her said suit.

FRANK ANTONSANTI,
PETTINGILL & LEAKE,
Attorneys for Defendant.

And thereafter, at the same trial term to wit, on January 20, 1905, an order was entered upon the records of said court, which is a- follows, to wit:

No. 281.

ANGELA LARA
vs.
ANTONIO ORTEGA.

The defendant in the above cause having, on the 16th day of January, 1905, filed his motion in arrest of judgment and for a judgment *non obstante veredicto* herein, to the filing of which exception was duly taken by the plaintiff, the said motions being now argued and considered by the court are severally overruled, to which several rulings the defendant by his counsel excepts.

And said defendant thereupon having presented and filed his petition for a writ of error, for the fixing of the amount of a supersedeas bond, and for extension of time for presenting and settling his bill of exceptions in this cause, it is hereby ordered that said writ of error be allowed; that thirty days from this date be given for the presentation of defendant's bill of exceptions; that the amount of the supersedeas bond be fixed at eight thousand dollars; and that upon the filing of such bond, with good and sufficient sureties to be approved by the clerk, further proceedings in this cause be stayed until the final disposition of the same in the Supreme Court of the United States.

Petition for Writ of Error.

Filed January 20, 1905.

In the United States District Court for Porto Rico.

No. 281.

ANGELA LARA
vs.
ANTONIO ORTEGA.

Comes now the defendant herein, by his attorneys Frank Antonsanti and Pettingill & Leake, and complains that in the record and

proceedings had in said cause, and also in the rendition of the judgment in the same in said United States district court for Porto Rico, at the October term thereof, A. D. 1904, against the said defendant on the 6th day of January, 1905, manifest error hath happened to the great damage of said defendant.

Wherefore, the said defendant, Antonio Ortega, prays for the allowance of a writ of error to the honorable, the Supreme Court of the United States, and for an order enlarging the time for the preparing and presenting of his bill of exceptions to the rulings of said court herein and fixing the amount of a supersedeas bond herein, and for such other orders and process as may cause the same to be corrected by the said Supreme Court of the United States.

And petitioner will ever pray.

FRANK ANTONSANTI,
PETTINGILL & LEAKE,
Attorneys for Defendant.

11 *Assignment of Errors.*

Filed March 7, 1905.

In the United States District Court for Porto Rico.

ANGELA LARA
vs.
ANTONIO ORTEGA.

Comes the defendant in the above-entitled suit by his attorneys, Frank Antonsanti and N. B. K. Pettingill, and assigns the following as the errors committed by the court aforesaid in the course of the trial and proceedings in said cause:

I.

The court erred in overruling the demurrer interposed by this defendant to the plaintiff's complaint herein.

II.

The court erred in overruling the objections made by defendant to the admission in evidence on behalf of plaintiff of the six letters set forth in the bill of exceptions in said cause, under the numbers 1 to 6, inclusive, and in admitting said letters in evidence over said objections.

III.

The court erred in refusing and denying the request, made on behalf of the defendant at the close of all the evidence in the case, that

the jury be instructed to bring in a verdict in favor of defendant, upon the grounds in said motion and request set forth.

IV.

The court erred in instructing the jury in said cause that the testimony showed beyond a reasonable doubt that a promise and contract of marriage existed, and that their consideration of the case
12 should be confined to the question of damages suffered by the plaintiff.

V.

The court erred in entering judgment in favor of the plaintiff and against the defendant, as shown by the record herein.

VI.

The court erred in denying and overruling the motion made in behalf of defendant to arrest the judgment herein.

VII.

The court erred in denying and overruling the motion made in behalf of defendant to enter a judgment in favor of the defendant *non obstante veredicto*.

Wherefore, the said Antonio Ortega, plaintiff in error, prays the honorable the Supreme Court of the United States, to examine and correct the errors assigned, and for a reversal of the judgment of the district court of the United States for Porto Rico entered in the above-entitled cause.

FRANK ANTONSANTI,
N. B. K. PETTINGILL,
Attorneys for Defendant and Plaintiff in Error.

And thereafter, to wit, on April 4, 1905, a bill of exceptions was filed in the clerk's office of said court, as of February 17, 1905, the same having been signed and approved by the court, as of that date, which said bill of exceptions is as follows, to wit:

13 *Bill of Exceptions.*

In the District Court of the United States for Porto Rico.

ANGELA LARA
vs.
ANTONIO ORTEGA.

Be it remembered that at a term of the United States district court for Porto Rico, held in the city of San Juan on the 10th day of October, A. D. 1904, a cause therein pending, wherein Angela Lara

was plaintiff and Antonio Ortega was defendant, came on to be heard before the Honorable Charles F. McKenna, judge of said court, at which time came the said parties by their respective attorneys, T. D. Mott, Jr., Esq. for the plaintiff and Frank Antonsanti, Esq. for the defendant; and thereupon the issues in manner aforesaid joined between the said parties came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said issues upon the merits of said cause in manner aforesaid joined.

And thereupon the plaintiff, to maintain the issues upon her part, called as a witness in her behalf the defendant ANTONIO ORTEGO, who, after being duly sworn, testified in substance as follows:

That he was the defendant in the suit; that his business was that of a merchant and he was a member of the firm known as A. Ortega & Company; that his age was thirty-four years; that he was born in the Kingdom of Spain; that he had known the plaintiff for more than ten years; that he had visited the plaintiff occasionally for three or four years, sometimes of his own accord and sometimes by invitation; that he did not call as the fiancee of the plaintiff but for the purpose of finding out whether the plaintiff would suit him for a wife and whether he loved her, but he never spoke to her of
14 matrimony; that on one occasion her father called to see him and witness told him that he had the best of intentions but could make no promises because he needed to know plaintiff better and see whether they agreed in character and would make a happy couple; that witness left Porto Rico in the month of June, 1903, for New York and from there went to Europe, returning to Porto Rico in October, 1904; that he married in Spain on October 6, 1904, just before returning to Porto Rico.

Witness thereupon identifies thirteen letters which are admitted in evidence and marked, numbers one to thirteen consecutively, which are offered in evidence by the plaintiff and are literally as follows:

1.

ANGELA: For a long time I have loved, and still love you with all my soul, and upon this love which up to now has laid hidden, I fix and place all the joy and happiness of my life. Can I hope that it will be reciprocated? If so, there would be realized the dearest wish of your devoted admirer.

ANTONIO ORTEGA.

Q. B. S. P.
October 13, 1894.

2.

ANGELA: Great doubts assail me because of your silence. Is it that I have had the misfortune of mortifying you with my previous letter? I pray you to answer me, and that in doing so not to forget that your enthusiastic admirer loves you as nobody else can love you.

ANTONIO ORTEGA.

15 October 16, 1894.

3.

OCTOBER 21, 1894.

ANGELA: At last, last night, your letter which had been awaited so long was delivered to me.

So you doubt of my affection, and give no credit to my words which, please believe, are no more than the pure truth declared with the frankness which is peculiar to me.

Nay, do not doubt; the affection which I profess is so true, so intense, that, in very truth, even though I should wish to do so, I could not express it; words would fail me; and may I not hope for the blessedness of its being reciprocated? I have hopes, Angela, and I have them because I conceive you to be so generous, so good, that I cannot believe you would subject me to the martyrdom which a flat negative would cause me to suffer.

This time do not make me wait so long for your answer, and may it come to take out of doubts and vacillations your very attentive and S. S. Q. B. S. P.

ANTONIO ORTEGA.

4.

AMIGUITA MIA: There was a great deal I should liked to have said to you last night when I was so fortunate as to meet, in such a casual way, you and your "sympatica", pretty and interesting sister; but the time was so short that it was scarcely sufficient to exchange the first preliminary phrases; I hope that a propitious occasion will present itself soon.

I wrote to you on the 26th, and I believe the letter is in your possession. When will I hear from you? I await news from you with impatience.

Your very affmo. S. S. Q. B. S. P.,

ANTONIO ORTEGA.

October 31, 1894.

5.

OCTOBER 26, 1894.

AMIGUITA MIA: Before all receive expressions of my gratitude for your condescension in answering my last letter so promptly. I have not been so fortunate as to convince you, and even now you have doubts which are, I must confess, very natural, but in this case, believe me, entirely groundless.

As I am new in affairs of love it is not strange that I should be awkward, and that, for this reason, I have not succeeded in making you understand that it is true affection, the affection of the soul which I feel for you; affection which, I say with all truth, dominates completely, absolutely all my being.

If you still doubt, I shall have patience, that patience which you so much recommended to me; but, at any rate, my little friend, do not fail to write to me, and do not deprive me of the great satisfaction which your letters produce.

Your very attoo and S. S., Q. B. S. P.,

ANTONIO ORTEGA.

17

6.

ANGELA: After waiting so long for your definite answer without obtaining it, I wanted, the other night, to ask you one question, only one, from the street; but, what deception! you changed your attention and turned in another direction.

I do not want to describe the sad impression produced by such contrariness; let that remain for me, since for me I have saved always my great sufferings. Have I nothing now to hope for? Goodbye, Angelita. I am always your admirer,

ANTONIO ORTEGA.

November 26, 1894.

7.

SAN JUAN, P. R., *June* 2, 1900.

Sr. Don Fernando de Lara,

MY ESTEEMED SIR: There existing a certain understanding between myself and your daughter Angelis, I deem it my duty to make you acquainted with the same, and at the same time I permit myself, duly authorized by her, to request your permission to visit the house at opportune times.

With sentiments of high consideration, I remain, your very atto. and S. S.,

Q. B. S. M. ANTONIO ORTEGA.

8.

ANGELITA: For some days I have been suffering with a bad cold, and I cannot run the risk of exposing myself to the drafts of the trolley in order to go out this night, because, as it becomes evening, I feel some fever.

18 Do not, on this account, refrain from going to the "Verbena" and ball to enjoy yourself.

I believe that by remaining in doors this evening I shall be well in the morning, since my colds do not usually last long, and I count upon being able to call at your house tomorrow or the day after at the latest.

I do not think the weather is very sure to-day, and if a shower should overtake me with the cold that I have, I might find myself in a fine fix.

Adios. Tuyo,

ANTONIO.

December 7, 1902.

9.

MY DEAR ANGELITA: When I indicated to you a few days since my intention to go to the United States I noticed the bad effect which the news caused you, and I did not desire to insist because I wanted to avoid that there should be created between us a violent situation, but the voyage being inevitable, being required by my business, the state of my health which is not very good, and my having to accompany my younger brother whom I expect to leave there for some

time in a college which I myself desire to select, it has appeared to me to be better to go aboard without saying anything to you, because by so doing we mutually avoid the sadness of the farewell which must necessarily have been very painful. But pardon me. The absence shall be short, as I shall endeavor to return as soon as possible, when this great disappointment shall remain fully compensated for. Good-by. Make my adieus to all, to your father, to your sisters, and may they all be indulgent; make my adieus also to Miguel for whose health I am so much concerned, but whom I have preferred not to see so as not to increase my sadness.

ANTONIO.

July 21, 1903.

10.

NEW YORK, *August* 20, 1903.

MY DEAR ANGELITA: I have not had humor or tranquility for anything since my arrival, and even to my own brother I have not written more than a line now and then, and not by all the steamers. I wanted, also, to know what news I could give you after consulting the physicians here, which is what, mainly, caused my trip.

I have received your little letter of the 9th inst. in which you make no mention of the unfortunate end of poor Miguel, but my brother Paco has already informed me of the same by the last steamer which arrived from there. The unfortunate news has caused me a very sad impression, and I trust you will all believe, especially poor Lola, that I join in your sorrow with all my heart, and that I lament with all my soul the irreparable loss.

Being very sick and wasted there for some time I tried to hide it and I did not complain of anything, but I felt very badly and always thought of the advantage of coming here and being examined by one of these great doctors, which, after all, I have done a little late. The doctor finds me wasted, enervated, and on the point of becoming and remaining useless, as I have already been on another occasion, if I do not submit to a radical cure commencing by getting out of that climate which is the cause of all and which is so fatal to me, and remove myself to a mild climate of Europe, where I may remain for a long time undergoing a rigorous treatment, taking baths and living a quiet and peaceful life for some time without occupying myself with anything, and avoiding all agitation and all mental labor, the only manner in which I may stop the evil, for I do not wish to become useless as I already nearly am; and I know by sad experience that it really is so, because already on another occasion I passed through the same, although by the same procedure I succeeded in recovering them, something I do not know I shall succeed in doing now, as I am now more worked. Thus, I find myself obliged to go to Europe, and as I must not lose any time I shall see a specialist in these ailments, as the doctor here has recommended to me, so that I may undertake his treatment. I go,

therefore, with my soul full of sadness and dominated by black presentiments which but increase my suffering. I do not know where, at what place, I shall definitely stop, but you will have timely news from me. Have patience and conformity that better times will surely come.

Adios. Greet in my name all in your house, and "te quiere siempre,"

ANTONIO.

11.

BARCELONA, *September* 10, 1903.

Sr. Don Fernando de Lara, San Juan, P. R.

MY VERY RESPECTABLE AND DISTINGUISHED SIR: Being obliged, by reasons of my health to remain in Europe without knowing whether I shall succeed in recovering in shorter or longer time, as I do not receive great hopes from the doctors of New York, Paris and Barcelona, and finding myself incapacitated in every way, I deem it my duty, in such lamentable situation, to make a parenthesis in my relations with your daughter Angelis, and to consider them as terminated while I find myself in the actual sad situation, to the end of not causing her prejudice for any longer time by keeping her in such an indefinite state of affairs, which I have never been able to resolve in any satisfactory manner, notwithstanding my best wishes.

I could not make her happy in my actual condition, and with great pain in my heart I deprive myself of her affection which has always been to me so ineffable. I shall always conserve her in my sad days a sweet remembrance, and I pray God to make her happy, that he may surround her with a tranquillity which now for me will never exist.

I pray you to be benevolent and to look upon me with indulgence, assured that I respect you in a high degree and that I distinguish you always.

Yours very atto., etc., etc.

ANTONIO ORTEGA.

12.

NERGA, MALAGA, *December* 29, 1903.

Sr. Don Fernando de Lara, San Juan, P. R.

MY RESPECTED AND DISTINGUISHED SIR: Under date of September 10th I wrote to you from Barcelona, which letter I suppose is in your hands, and afterwards my brother Paco informed me that you had written me in answer to the same. I must inform you that I have not received any letter from you, for which reason I have not been able, and cannot now refer to the same. Nevertheless, I feel called upon to reiterate what I have expressed to you in the letter from Barcelona above referred to because the causes which I therein mentioned or presented have not undergone any change, but, on the contrary, have become aggravated. Powerful motives prevent me

from taking to a due end the relations, which I already believed at an end, with your daughter without it depending upon my
22 will to take any different or other action.

I pray you therefore that this be understood in this way for once and all, and that I be considered as freed from all engagement which circumstances through which I am passing will not permit me to attend to.

With sentiments of the highest consideration, I remain,

Yours very atto., ANTONIO ORTEGA.

13.

NERGA, *December* 29, 1903.

MY ESTEEMED ANGELITA: Upon arriving at this town I have found various letters from you and also one from Zenaida, letters which make my days more bitter than they already are, and which I desire to answer before betaking myself to other points of Spain in search of the health lost during my long trials in Puerto Rico. As a consequence of these trials I have contracted a grave infirmity of the spine, which, according to the doctors who have seen me, not only renders it impossible for me for a long time to return to a climate such as that one, but also will never permit me to contract matrimony except it be at the cost of my health and of my life at the end. This is the pure truth, and all other things that may be talked about and what may be said there are stories and advices which must not be minded, and all which I look upon with disdain because they are entirely without any foundation.

This being the state of affairs, which I lament more than any one, I wrote in September to your father, from Barcelona, and I believed that upon the receipt of my letter everything was considered
23 as terminated as it was proper to do.

I believe there are not motives for so much alarm, for cases such as this are seen with frequency and always, generally, without legitimate and true motives such as exist in abundance in the present instance. Thus you will see that this indefinite situation in which, apparently, you desire to continue, does not in any way prejudice me, except in what it makes me suffer, but it does prejudice you, and for that reason I desire to end it.

I advise you, therefore, for your own benefit, that you completely forget me, give it all as terminated, since on my part I can do nothing in my actual situation which, if by a stroke of good luck should some day change to one more favorable, it might present things to us in a very distinct manner, and which might permit me to realize the aspirations which I have always held, but from which, unfortunately, I see myself now so distant.

In my wardrobe I left a packet of letters and some objects of yours which I tell my brother Paco to remit to you.

Adios. Forget me. Do not do nor say foolish things, and I shall always conserve a sweet remembrance of you.

Yours, ANTONIO ORTEGA.

24 Counsel for the defendant objected to the introduction of the above letters numbered from one to six inclusive on the ground that they were dated in the year 1894 without any offer on the part of the plaintiff to show any connection between said letters and those of more recent date, and on the further ground that said dates were too remote from the date of the contract as alleged in the declaration, which objections were overruled by the court. To which ruling the defendant did then and there except.

Plaintiff, further to maintain the issues on her part, was duly sworn as a witness in her own behalf and testified in substance as follows:

That she was the plaintiff in the case; that she had known the defendant since 1893; that defendant had professed love for her and had spoken to her of marriage and of the time when they would marry; that defendant wrote a letter to her father asking his permission to call at the house and that said letter was occasioned by an understanding between them; that their engagement was formally made; that defendant asked her permission to write that letter and at the time gave her his promise to marry her; that it was then that he began to call at the house, which he continued to do up to the day prior to his leaving for New York, during all of which time the defendant continued to treat her in the same way; that she never consented to the breaking off of the engagement and the first intimation she received of any such desire on his part was in the letter written to her by defendant from Spain; that then she still believed in the sincerity of the love and not only did not consent to the breaking of the engagement, but informed him of her desire to continue it; that she had made known to her friends her engagement to marry the defendant and the same was generally known publicly; that she
25 is dependent upon her father for her support; has no surplus property or estate.

Upon cross-examination, plaintiff further testified in substance that she was thirty-two years of age and that her full name was Maria Angela Tomasa; that the defendant first promised to marry her in 1899 and renewed his proposal in 1900, when she accepted the engagement and he gave her an engagement ring; that in the same year of their engagement defendant told her that he intended to marry her during the next year; that when the time set expired, he gave business excuses for not marrying until later and finally fixed the date of the wedding for July or August of the year when he left for Spain; that he was absent in Spain on a previous occasion for nearly two years from 1896 to 1898; that during that time plaintiff received no letter and had no relation of any kind with him. The witness further identified a letter written by her to the defendant, which is afterwards introduced as Exhibit "A" for the defendant.

And the plaintiff, further to maintain the issues on her part, produced as a witness José Maria Lomba, who, being duly sworn, testified in substance as follows:

That he had been a resident of San Juan, Porto Rico, for six years and was a member of the commercial firm of M. Lamba & Company; that he knew both plaintiff and defendant and that he had not heard that they were to get married, but had heard that they were sweethearts.

And the plaintiff, further to maintain the issues on her part, produced as a witness JOSEFA AGUAYO DE VENTURA, who, being duly sworn, testified in substance that she resided in Santurce, a
26 suburb of San Juan, where she had resided twelve years or more; that she knew both the plaintiff and the defendant and had heard that they were to be married; that she had first heard so in the year 1900 and many times since; that the fact that they were to marry was a subject of public knowledge and comment; that she had heard the marriage was to take place very soon, but had never heard any date mentioned and she knew of no preparation being begun for the wedding.

And the plaintiff, further to prove the issues on her part, produced as a witness JOSÉ VILASECO, who, after being duly sworn, testified in substance that he knew the defendant and was formerly employed by him in his store and also was attorney in fact for the firm up to a year ago and that he had heard the wealth of the defendant estimated at thirty to forty thousand dollars, but, in the opinion of the witness, that amount was too high.

And the plaintiff, further to prove the issues upon her part, produced as a witness FERNANDO DE LARA, who, being duly sworn, testified in substance that he was the father of plaintiff and had known the defendant for six or seven years, more or less; that he had had a conversation with defendant touching the question of marriage between defendant and his daughter in the year 1899, a few days after receiving one of the letters previously introduced in evidence; that, as his daughter had informed him that defendant had become engaged to her and intended to marry her, witness requested him to call at his house and referred to the letter which he had written and defendant then affirmed his intention of marrying plaintiff and promised witness to marry her the following year, and, as either the same
year or the following year, witness had to go to Spain, he
27 called upon defendant and in view of what had occurred, requested him to look after witness' family during his absence; that after the return of witness, defendant, on account of certain business matters, postponed the date of the wedding until the following year; that witness asked defendant in the interview aforesaid when he intended to marry plaintiff, although the latter, preceding the interview, simply asked permission to visit the house because, as defendant had addressed himself to the head of the house, it was natural to presume that he had a formal and serious intention.

And thereupon plaintiff rested her case.

Whereupon the defendant, to maintain the issues on his part, was sworn as a witness in his own behalf and testified in substance as follows:

That he was the defendant in the case and knew the plaintiff; that beginning with the year 1900 up to the time witness went to Spain, with several intervals, a friendship sprang up between them, which followed the natural course of increasing acquaintance and visiting the plaintiff by the defendant; that witness remembered the conversation he had with the father of plaintiff some days after writing the letter to him requesting permission to visit the house; that witness denied absolutely that in said conversation plaintiff's father asked him when he intended to marry plaintiff and that witness replied he would marry her within a year; and that several times before leaving for New York witness talked with the plaintiff about their courtship for the purpose of bringing the same to an end before his departure, but no definite conclusion was arrived at; that a day or two before he left for New York witness received the letter previously marked Exhibit "A," which is literally as follows:

ANTONIO: I am very much ag-rieved by your censurable conduct towards me. You well know that that is not the proper way for you to express your feelings, since extremes always appear ridiculous at the end and it would be a pity if you should come to that.

So inasmuch as some days ago I told you I was desirous of
28 speaking with you, I say to you today in writing that I wish to bring to an end a situation which is so disagreeable to me.

ANGELA.

And that upon arriving in New York witness answered the letter, which answer is already in evidence.

And further to maintain the issue on his part, defendant produced as a witness ALEJANDRO GAOS, who, being duly sworn, testified in substance that he lived in San Juan and had known the plaintiff for some time; that in a conversation at a dance in San Juan some six or seven months previous, plaintiff had stated to witness that all relations between herself and the defendant had entirely ceased; that he had never talked to the defendant about said conversation, nor with anybody else so far as he remembered; that he was a native of Spain.

And the defendant, further to maintain the issues on his part, produced as a witness FRANCISCO ORTEGA, who, being duly sworn, testified in substance that he was a brother of the defendant; that through instructions from the defendant while he was in Spain, witness returned to the plaintiff a package and also two letters, one for the plaintiff and one for her father accompanied by a letter written by witness to the plaintiff. This was during the first days of February, 1904; that before the delivery of this package and letters, the plaintiff and her father had oftentimes come to the store to ascer-

tain the whereabouts of defendant, but afterward they did not come at all nor make any inquiries; that the package contained letters and trinkets, but he did not know the contents of the letters.

And thereupon defendant rested his case and plaintiff in rebuttal offered in evidence the letter above testified to as written by
29 the witness Francisco Ortega, brother of defendant, to the plaintiff, which is introduced as Exhibit 14 for the plaintiff and is literally as follows:

SAN JUAN, P. R., *February* 5, 1904.

Sr. Don Fernando de Lara, Santurce.

ESTEEMED SIR: I have the pleasure of enclosing two letters, one for you and one for your daughter, which per S. S. "Ponce" I have just received from by brother Antonio. He charges me to send with these letters a packet which he says he left in his wardrobe, and you will pardon my not doing so because I have not found the key, but I shall look for it, and shall send you the packet tomorrow.

I am

Yours, etc., etc., FRANCISCO ORTEGA.

And further in rebuttal, plaintiff is called as a witness in her own behalf and testifies in substance that the letter previously identified by her and introduced as defendant's Exhibit "A" was written by her about four years previous and was caused by a slight misunderstanding between her and the defendant, but afterwards the misunderstanding was cleared up during one of the defendant's visits to plaintiff's house and afterwards their relations continued the same as before; that she had never had any conversation with the witness Gaos touching her relations with the defendant.

Thereupon plaintiff again rested and the foregoing constitutes the substance of all the material evidence in the case.

Thereupon the defendant moved the court for a peremptory instruction to the jury to bring in a verdict in favor of the defendant on the following grounds, to wit: First. Because no damages
30 recognized by the law had been proven. Second. Because the court has no jurisdiction of any suit where both plaintiff and defendant are subjects of the King of Spain. Third. Because under the declaration in this suit, the cause of action arose in June, 1900, at which time there was no provision in the laws in force in Porto Rico for a suit of the character set out in plaintiff's declaration, the only basis for the said suit being the provisions of Article 44 of the Civil Code then in force, which motion of the defendant was overruled by the court, to which ruling the said defendant by his counsel did then and there except.

And thereupon counsel for the plaintiff requested the court to instruct the jury peremptorily that the existence of a contract of marriage has been proven.

Whereupon the court ruled that the testimony showed beyond a reasonable doubt that there was a promise and contract of marriage and instructed the jury that their entire consideration and disposition of the case should be confined to the question of damages, if any have been sustained by the plaintiff, to which allowance of said motion and prayer of plaintiff and said ruling of the court, counsel for the defendant did then and there except.

And the said parties having so concluded and submitted their testimony in the several matters aforesaid and having by their respective counsel submitted arguments to the jury, the said judge, before said jury retired to consider of their verdict, did then and there of his own motion charge and instruct the jury as follows:

GENTLEMEN OF THE JURY: The recess taken by the court was to hear arguments of counsel on the legal questions involved in the points presented. They have been fully discussed to the court and the conclusion and rulings of the court on the questions re-
31 lieve you from the further consideration of certain questions of fact arising in this case. The court is convinced that on the evidence and the admission of letters of defendant, it has become the duty of the court to pass on the legal question involved as to whether or not the evidence shows there was an actual marriage contract entered into between the parties to this suit. The writings and oral admissions of defendant with the testimony of plaintiff and witnesses are such that I will instruct you, as a matter of law, that there has been proven an existing and continuous contract of marriage, between these parties, until broken off by defendant's marriage, and that leaves to be considered by you only the question of amount, if any, to be allowed plaintiff for the direct and compensatory damages for the breach of the contract of marriage, if found to be broken without lawful excuse or plaintiff's consent. Counsel are to be limited in their arguments to that question of the amount of damages, if any, to be allowed plaintiff for breach of the marriage contract, if you find same was in force and was violated without just cause, excuse or consent of the plaintiff.

Attention has been called by counsel of plaintiff to two other defences specifically set up by defendant acknowledging existence of promise to marry, but alleging fraud and misrepresentation in procuring the promise. Those two defences thus set up were repugnant to and inconsistent with the principal defence of defendant in absolutely denying a promise to marry plaintiff. On the defence that plaintiff's age was misrepresented a few years, the court ruled that such evidence, if believed, was not material, the proof establishing as the only cause defendant assigned verbally and in letters for the breaking off of the contract of marriage was the ill health of
32 the defendant. The other inconsistent defence was an alleged scandal sought to be introduced as relevant testimony, charging that plaintiff's parents were not married until four years after birth of plaintiff. The offer of this evidence was deemed improper and irrelevant, even if it could be proven, because such a fact

would have been no defence or justification for violation of the contract of marriage, unless alleged to have been a condition or cause of breaking of contract. Defendant refused to testify that said scandal was ever communicated to him or that it had anything whatever to do with his action in failing to marry plaintiff or in breaking off the contract. It was certainly to the credit of defendant that he did not on witness stand repeat this defence, reviving an old scandal as set up in his plea filed in the case. You will therefore dismiss from your minds the consideration of both these defences, the first as immaterial and irrelevant even if proven; the second being disproved by defendant's own testimony.

The question involved in this case of whether or not there was a contract of marriage between plaintiff and defendant, the two defences sought to be introduced by defendant to justify the abandonment and violation of the contract, have been taken from your consideration because, in opinion of the court, the proof is wholly insufficient to raise a question to submit to a jury as facts. The law authorizes the court, where testimony contradicting or denying certain facts, fails or is so insufficiently proven, to take same from the jury. Counsel for the defendant have reserved the right to except to the rulings and findings of the court and if any error is made by the court in this ruling, the exceptions thereto will enable any error to be corrected.

Therefore I have ruled that the only question to be submitted to
you is the fact of the amount of damages, if any, that this
33 plaintiff sustained by the wrongful action and breach of this
contract, and is entitled to recover under the evidence submitted to you.

It may be necessary to explain to jurors who are natives of Porto Rico, the great change that took place in the law governing this class of cases when the sovereignty of Spain over Porto Rico was ceded to and assumed by the United States. Under the former regime, the Church and State were united. Contracts of marriage and also of engagements of marriage were regulated by the Church. There were known to be two kinds of marriages, one being a canonical marriage and the other a civil marriage. The Church had its way under Spanish government of regulating the marriages. One of the familiar customs enforced by the Catholic Church was that the banns of marriage were required to be published three successive Sundays in churches of the marrying couple. If any person had an objection or claim against the proposed marriage, there could be filed with the priest of the parish a remonstrance, and he would be obliged to refuse to perform the marriage ceremony. That existed when the Church and State were united and where the people, as in Porto Rico, were then all of one denomination. Under these conditions a young man or woman would hesitate about breaking marriage engagements, because of creating an impediment to being married in the church. All that ec-lesiastical practice and rules however have now changed in Porto Rico. In Porto Rico where the Church and State have now

fortunately no connection and the laws passed by Congress of the United States and the Legislature of Porto Rico, and which latter wherever practical are to be followed and administered by the United States Court, govern and control the question of marriage contracts, as in cases of any other civil contract.

34 Therefore you are to judge and determine this case under the laws now existing. The law of Porto Rico, like the laws of the United States, regards a contract of marriage as a purely civil contract. It is to be judged by you as an ordinary contract and if it has been violated and whether a valid cause or excuse for its violation is proven. The violation of a marriage contract however, relating wholly to the tender feelings and affections and reputation and standing in society of a young woman of course carries with it a different method of considering and estimating the damages sustained from what elements are considered in an ordinary breach of a business contract. In determinating the question of damages for a breach of promise of marriage contract, we are not left to conjecture as to rules for properly determining same or of elements involved. Whilst the law of breach of promise of marriage may be, as stated, entirely new to Porto Rico, the modes of assessing damages are not new. The rules for ascertaining damages in such cases are familiar to the courts of Great Britain and to the courts of the United States. In these courts damages have been uniformly awarded for the breach of a contract of marriage when the contract is broken without cause. The courts of many States of the American Union have passed upon the question. I will read to you a quotation from decisions of the supreme court of the State of California, which has said:

"In an action for the breach of the contract of marriage, the jury may look beyond the contract itself, in assessing damages, and may give the injured party compensation for injury to the feelings, affections, and wounded pride, as well as the loss of marriage."

This tersely states the principle and rule to be followed by you in considering the facts and circumstances of the case now under your consideration.

35 As to the amount of damages, if deemed proven by the testimony, your own discretion and common sense in such a matter, under the evidence, must govern as to what you will allow for injury to those feelings, affections, wounded pride and loss of marriage of the plaintiff. It would be improper for me to intimate how much should be allowed. It is for you alone, for your exercise of sound discretion to decide how much is fairly and reasonably due the plaintiff under the evidence for any direct pecuniary damages and for any compensation to her feelings and pride, and it is your duty to decide that in this case, as also to consider as an element of damage plaintiff's loss of marriage, defendant's circumstances and prospects being elements for your consideration of this phase of damages.

It is allowed in these cases for plaintiff to prove that the engagement and marriage contract was so well known that it became a

matter of public reputation and repute in the family circle. There was an existing engagement as the testimony, as previously ruled on, established verbally in addition to the voluminous correspondence introduced in evidence. The testimony further tends to prove that the bridesmaid and groomsman were selected, as that it is the custom in Porto Rico to choose these parties to assist at weddings by the mutual consent of the parties to be married. Under the testimony this would tend to prove the wide publication of the marriage. All these would tend to prove elements of pain and mortification and wounded pride sustained by plaintiff. In estimating the damages to be awarded for the violation of this contract by this defendant, all these are elements for your consideration. You are to especially take into consideration testimony tending to prove the publicity, the length of time of the marriage engagement and the
36 exclusive attention that the defendant paid to plaintiff. You may consider plaintiff's testimony tending to prove that, even though defendant's health was believed by her to be failing and likely to be incurable as he had written her from Europe, notwithstanding all this, she remained attached to him and had no idea of releasing him as he had requested in letters because of failing health. Plaintiff testified that the invalid condition of defendant added to her affection and increased her sympathy and that she sincerely believed defendant's letters. All this enters into the case. It is mentioned because if you believe plaintiff's testimony, the unexpected violation of the marriage contract of defendant by his letter from Europe to plaintiff's father and also to plaintiff, demanding his release from the marriage engagement, is a matter that of course leaked out, became known in the community, became publicly known, and of course would naturally be discussed in the community. This is a matter for you to consider as an element in the case whether such action was or was not a severe blow to the young lady, calculated to cause her pain, suffering and humiliation and to wound her pride, not to mention her loss of marriage to defendant, a reputable and prosperous business man, as the testimony tends to establish.

You witnessed the deportment of the young lady, plaintiff, as a witness, saw her behavior, her manner, her action throughout, and it is for you to judge therefrom of her refinement and sensitiveness, and it is for you to draw conclusions as to the truth of her statement, whether or not, as the testimony tends to prove, her feelings and her sensibility were seriously affected by the conduct of defendant in the matter of violating the contract of marriage.

The alleged failing health of this defendant, if believed by you, would be proper for you to consider as an element to mitigate
37 damages. The letters of defendant indicate that his failure of health was the only reason that he ever alleged for the desire to be released from the contract of marriage with plaintiff. You have, notwithstanding the persistence with which defendant alleged orally and by letter his total failure of health, incapacitat-

ing him from entering the state of matrimony with plaintiff, that inside of a year he was married to another lady. It is for you, under the evidence, to determine whether these letters of defendant to plaintiff, setting up the terrible condition of his health, were true at the time or manufactured by defendant and to deceive and defraud plaintiff into giving him a release. If the defendant was in fact in as bad health as his letters described and he was now in court a broken down confirmed invalid, it would then be a matter for you to consider in connection with amount, if any, of damages to be awarded for defendant's breach of contract. Whether the contents of those letters written to this lady and read to you were true or were false and manufactured and were a part of a trick and deception of defendant, it is for you to consider in connection with the question of damages. If the defendant's letters read to you are believed by you to be true and not wilfully exaggerated to mislead and deceive plaintiff into giving defendant release, it would be proper to give defendant the benefit of such belief and to find that the damages should be mitigated.

Testimony was introduced by plaintiff as to reputation for wealth and ability of defendant to pay the damages. By the law it is permissible to prove defendant's reputation for wealth. You recall the testimony introduced on that subject and you will take that into consideration on your assessment of the amount of damages, if any is to be awarded by you to plaintiff.

38 Law points or instructions have been prepared by counsel on both sides.

The court is asked by the plaintiff to state that as a matter of law, an agreement of marriage, while it relates primarily to the affections, to the joys and sorrows, and to the solace of domestic life, still it is in law considered as a contract of value, and that a breach of it without a justifiable cause or without the consent of the other party thereto, gives said other party a right to ask for damages for the breach of said contract. The law, under those circumstances, requires the party from whom the injury proceeds to compensate the suffered, not by the exact and precise damages which are given for the refusal to pay money, to convey property, or to perform services, but by such estimated damages as a jury, looking at all the circumstances of the case, may deem just.

That is a quotation taken from Bishop on Marriage and Divorce, a leading authority on the subject. This point is affirmed.

(2.) The court instructs you further that there are two elements which the jury must take into consideration in a case of this sort in making up its verdict of damages:

First: It estimates the plaintiff's pecuniary loss precisely as in a suit on ordinary contract.

Second: Then adds thereto whatever, under the circumstances, is deemed just for the resulting mental suffering.

As to the first of these elements, the damage which the law affords for a breach of contract of this sort should be apportioned to the

benefits lost by the breach, and to the advantages which would result from performance. For this purpose the pecuniary position of the defendant and the consequent benefits of the marriage the
39 fact that the female plaintiff has no independent means, and any other matter of a like sort may be taken into consideration by you.

Answer. This is affirmed. In this character of cases, as I stated a moment ago, you cannot produce a bill of items and say we have suffered this amount of damages. The law implies damages from the wrongful violation of such a contract as this. It is a wrong and wherever a wrong is done the law implies damages.

As to the second element, the wounded feelings and affections consequent upon the breach are elements of damage, and the court instructs you further that if you find from the evidence that the plaintiff, relying on the man's promise, announced the fact of an engagement to her friends and it became generally known to the family circle and to the public, this is an additional consideration which may be taken into consideration by you to increase her damages.

Answer. Affirmed.

As to the defendant's general reputation for wealth, that is also a subject to be considered by you. His social position in the community where he lives and the length of the engagement are all elements. And the correlative loss sustained by plaintiff in not securing advantages of marriage to defendant.

In speaking as to the element of damage, the court instructs you further that you may take into consideration in estimating the damages that the plaintiff is entitled to in the event that you find from the evidence that a contract of marriage existed between the plaintiff and defendant, and that the defendant has broken the same without the consent of the said plaintiff, or without any justifiable cause:

1st. The defendant's general reputation for wealth.

2nd. His social position.

40 3rd. The length of the engagement.

4th. The depth of the devotion.

5th. Her lack of independent means.

6th. Her mortification and injured feelings and affections.

7th. Her loss of reputation.

8th. Her altered social condition in relation to her home family, due to his conduct.

9th. And lastly the loss of a permanent home.

Answer. All that is affirmed. These circumstances enumerated are all for you to consider.

The defendant asks the court to give the following instructions.

Mr. ANTONSANTI, attorney for defendant: I don't think any instructions asked by defendant are applicable in view of the rulings of the court.

The COURT: Do you therefore ask leave to withdraw them?

Mr. ANTONSANTI: Yes, sir.

The COURT: In conclusion, I wish to say that, whilst this case nat-

urally arouses sympathy and also possibly indignation, you are not to be governed by such feelings in your verdict. The testimony before you must be your sole guide in reaching a verdict

Having answered all the instructions submitted in this case by plaintiff's counsel, and, in doing so, having covered the principles and rules governing your consideration of the evidence in this case to enable you to reach a determination, it is probably sufficient if I conclude my remarks to you by simply recapitulating briefly the principles involved and which should govern you in the application of the evidence.

By the ruling of the court already stated, that, as a matter
41 of law under the evidence, the court should take from the jury the facts as established by the evidence. First. That there was a lawful marriage contract proven by the verbal and written evidence in this case, which contract was violated by the marriage of the defendant to his present wife, thus completing the breach of contract for which this action lies and for which breach, like the breach of any other contract, defendant becomes liable to the plaintiff in the absence of proof of any justification for the violation of the contract, to all damages that result from the violation of the contract.

It will be observed, as already stated, that the sole defence insisted upon by the answer and proof of defendant is not that he was justified in breaking the contract in evidence or that any circumstances occurred tending to excuse his non-performance thereof, but he relies wholly on his denial of any promise or engagement at any time to marry the plaintiff, as alleged. Therefore, in the absence of any defence or justification excusing defendant from non-performance of his contract, under the ruling of the court already made that the contract and its breach by the marriage of defendant has been as a matter of law duly established, your duty is limited to the determination of whether this plaintiff has sustained any damages whatever through the breach of contract by defendant, and if so, the amount to which she is entitled to compensate her for the same. Damages for breaches of contracts of marriage may be allowed for what is called the direct or pecuniary damages in a case where the plaintiff has incurred expenses and outlays in preparing for a marriage and the necessary trousseau and incidental expenses. In this case there is no proof that

I recollect for submission to you showing that plaintiff in-
42 curred any expenses or paid out any money or sustained any pecuniary loss in expenses of preparation for a marriage, and therefore this character of damages under the evidence is not for your consideration.

Compensatory damages are by law allowed in a case like the present where the evidence tends to prove injury to the feelings, and affections and consequent suffering by plaintiff from the mortification and disgrace attendant upon the breaking off of the marriage engagement without cause; and also is for your serious consideration, under the evidence, in the same connection, allowance for the loss of the

value of a desirable marriage to plaintiff and any financial or social advantages which the evidence or the circumstances of the case show likely to accrue to the plaintiff as a result of a marriage to defendant, which items and considerations and evidence bearing on same are wholly for your consideration, they having been enumerated at length in the instructions.

A third character of damages is recognized by courts and allowed by the law where marriage contracts are shown by the evidence to be violated flagrantly, wantonly, maliciously, wrongfully and with a reckless disregard of the feelings and rights of a party to the contract, and in such cases damages are allowed because the character of these cases is in the nature of a tort.

Punitive or exemplary damages are also sometimes called "smart money" and are recognized by the law as having for their object to enforce and teach a lesson to ones who may unjustifiably and wantonly violate a marriage contract, that the law and rights of a person cannot be violated with impunity and to show that even in the case of the weakest or humblest individuals, their rights, their feelings, their property and their person are sacred and are in law to be
43 protected and vindicated.

I do not wish you to infer from my mentioning the above rule that this is such a case as to warrant the application of punitive damages. It is for you as the jury, under all the evidence adduced and all the circumstances in the case, to carefully consider whether from the facts in evidence the allowance of any punitive damages would be warranted by the evidence, taking into consideration defendant's financial circumstances as shown by the testimony.

You will therefore be careful to draw no inference from this definition of punitive damages as conveying the opinions of the court on the evidence. If such inference is warranted by any remarks made by the court, you will disregard such remarks, as the facts and evidence are wholly for you. You will apply the evidence under the instructions of the law and use your sound discretion and judgment as to what amount, if any damages, is to be allowed the plaintiff in this case, taking into consideration the testimony and regarding, as stated, defendant's financial reputation and limited capacity to pay. All of which elements, as stated, enter into the determination of this case under the sound discretion which you are required by law to use in disposing of this case.

And the said jury, having heard the evidence, the charge of the judge and the various matters aforesaid, retired to consider of their verdict and thereafter returned into court a verdict in favor of the plaintiff, assessing her damages at the sum of Five Thousand ($5,000.00) Dollars, as more fully appears in the record of said cause.

And for as much as the matters above set forth do not fully appear of record, the defendant tenders this his bill of exceptions and prays that the same may be signed by the judge of
44

this court pursuant to law, which is done accordingly this 17th day of February, A. D. 1905.

CHAS. F. McKENNA, *Judge.*

45 In the District Court of the United States for Porto Rico.

ANGELA LARA, Plaintiff,
vs.
ANTONIO ORTEGA, Defendant.

I, H. H. Scoville, clerk of the district court of the United States for Porto Rico, do hereby certify the foregoing forty-four typewritten pages, numbered 1 to 44, inclusive, to be a true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and affixed error is $23, and that said amount was paid by Frank Antonsanti and Pettingill & Leake, attorneys for plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this sixth day of April, A. D. 1905.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk of the District Court of the United States for Porto Rico.

46 UNITED STATES OF AMERICA, *ss:*

To Angela Lara, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the distr-ct court of the United States for Porto Rico, wherein Antonio Ortega is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles F. McKenna, judge of said district court of the United States for Porto Rico, and the seal of said court, this 24th day of January, in the year of our Lord one thousand nine hundred and five.

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA, *Judge.*

Attest:
H. H. SCOVILLE, *Clerk.*

46½ *Return on Service Writ.*

UNITED STATES OF AMERICA, *The District of Porto Rico, ss:*

I hereby certify and return that I served the annexed writ on the therein-named Angela Lara by handing to and leaving a true and correct copy thereof with Thos. D. Mott, Jr., her attorney of record personally at San Juan, in said district on the 27th day of January, A. D. 1905.

E. S. WILSON,
U. S. Marshal.
—— ——,
Deputy.

47 [Endorsed:] U. S. district Ct. for P. R. Angela Lara *vs.* Antonio Ortega. Citation. Marshal's fees: 1 service, $2.00. Expenses—

48 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court of the United States for Porto Rico, before you, between Angela Lara, plaintiff, and Antonio Ortega, defendant, manifest error hath happened to the great damage of the defendant, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Charles F. McKenna, judge of the district court of the United States for Porto Rico, the 24 day of January, in the year of our Lord one thousand nine hundred and five.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk U. S. District Court for Porto Rico.

Allowed, to operate as a supersedeas, this 24 day of January, A. D. 1905.

CHAS. F. McKENNA, *Judge.*

49 [Endorsed:] No. 281. U. S. district court for P. R. Angela Lara *vs.* Antonio Ortega Writ of error Certified copy hereof filed in my office on Jan. 24, 1905. H. H. Scoville clerk dist. court of U. S. for P. R.

50 [Endorsed:] No. 281. In the district court of the United States for Porto Rico. Angela Lara *vs.* Antonio Ortega.

Endorsed on cover: File No. 19,713. Porto Rico D. C. U. S. Term No. 230. Antonio Ortega, plaintiff in error, *vs.* Angela Lara. Filed April 18th, 1905. File No. 19,713.